

ORIGINAL

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
AUG 16 2005  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_ Deputy *HT*

Plaintiff,

**V.**

TEXAS SUPREME COURT  
UNAUTHORIZED PRACTICE OF LAW  
COMMITTEE

**Defendant.**

**3-05 CV - 1644 B**  
Civil Action No.

## DECLARATORY JUDGMENT ACTION

## I.

Plaintiff, AMIGOS LABOR SOLUTIONS, INC., (“Amigos”), is a corporation incorporated in the State of Texas, whose principal place of business is 3141 Hood Street, Suite 440, Dallas, Texas. Plaintiff performs services on behalf of customer “employers” in the State of Texas, and elsewhere related to the filing of 8 U.S.C. § 1101(a)(15)(H)(ii)(a)<sup>1</sup> and § 1101(a)(15)(H)(ii)(b) [*commonly referred to as H2-A and H2-B*] petitions/applications for nonimmigrant alien laborers pursuant to Title 8 United States Code § 1184.

Defendant, the TEXAS SUPREME COURT/UNAUTHORIZED PRACTICE OF  
LAW COMMITTEE, is a nine member committee of lawyers and non-lawyers appointed

<sup>1</sup> 8 U.S.C. §1101(a)(15) [*The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens*] - **(H)(ii)(a)** having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of title 26 and agriculture as defined in section 203(f) of title 29, of a temporary or seasonal nature, or **(b)** having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, . . .

by the Supreme Court of Texas. The UNAUTHORIZED PRACTICE OF LAW COMMITTEE is charged with the responsibility of investigating and prosecuting complaints related to the unauthorized practice of law in the State of Texas.

## **II.**

This is an action for declaratory judgment pursuant to Title 28, United States Code § 2201, for the purpose of determining a question of actual controversy between the parties as described more fully in paragraph V and VI.

## **III.**

Jurisdiction of this action is based on Title 28, United States Code, § 1331.

## **IV.**

Pursuant to Title 28, United States Code, § 1391 venue of this action is properly in the Dallas Division of the Northern District of Texas because a substantial part of the events giving rise to this lawsuit occurs and will continue to occur in the Dallas Division of the Northern District of Texas.

## **V.**

1. On or about March 16, 1999, the Texas Supreme Court Unauthorized Practice of Law Committee sent a letter to Robert Wingfield, President of Amigos Labor Solutions, Inc., asserting a belief that Amigos “may have engaged in activities which constitute the unauthorized practice of law.” The letter gave Mr. Wingfield ten (10) days to provide a written response to the allegations.
2. On or about March 17, 1999, Mr. Wingfield sent a letter in response to the letter mentioned in Paragraph 1, wherein he specifically advised the UNAUTHORIZED PRACTICE OF LAW COMMITTEE that Amigos was not performing the

unauthorized practice of law, but acted as an “Agent” of employers as permitted by federal law.

3. A similar letter to the one described in Paragraph 1 was mailed to Amigos Labor Solutions, Inc., on July 18, 2002.
4. On or about July 19, 2002, Mr. Wingfield again responded to the allegations by referring to his previous letter which asserted that Amigos was acting as an “Agent” of employers as permitted by federal law.
5. The Supreme Court of Texas UNAUTHORIZED PRACTICE OF LAW COMMITTEE has pursued injunctive relief pursuant to Texas law against another similarly situated federally defined “agent”, to compel it to cease and desist the practice of preparing H2-A and H2-B petitions for employers.
6. Article I, Section 8, clause 4 to the United States Constitution states that “Congress shall have the power *To establish an uniform Rule of Naturalization, ...*”
7. Article I, Section 8, clause 18 to the United States Constitution states that “Congress shall have the power *To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.*”
8. Pursuant to the powers given to it by the Constitution in Article I, Section 8, clauses 4 and 18, Congress has the supreme jurisdiction to enact laws related to immigration and naturalization. *See e.g., Chy Lung v. Freeman, et al.* 92 U.S. 275 (1875).

9. Article VI, clause 2 to the United States Constitution states that **“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”**

10. Pursuant to the powers given to it by the aforementioned clauses of the Constitution, Congress has passed the Immigration and Nationality Act (INA) which is codified in Title 8, United States Code, Section 1101 *et seq.*

11. The Immigration and Nationality Act includes Title 8, United States Code, Section 1184(c) *Admission of nonimmigrants* which states in pertinent part:

(c) Petition of importing employer.

(1) The question of importing any alien as a nonimmigrant under subparagraph (H), ... of section 101(a)(15) [8 USCS § 1101(a)(15)] (excluding nonimmigrants under section 101(a)(15)(H)(i)(b1) [8 USCS § 1101(a)(15)(H)(i)(b1)]) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a) [8 USCS § 1101(a)(15)(H)(ii)(a)], the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 [8 USCS § 1188] shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a) [8 USCS § 1101(a)(15)(H)(ii)(a)]....

12. Pursuant to Title 8 United States Code, Section 1184, the Attorney General has prescribed regulations related to the admissions of nonimmigrant alien temporary employees which are codified in the Code of Federal Regulations. In particular 8 C.F.R. §214.2(h) addresses “Admission of temporary employees.” 8 C.F.R. §214.2 (h)<sup>2</sup> states in pertinent part

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<sup>2</sup> In a separate regulation, 20 C.F.R. § 655.100(b) the Secretary of Labor has defined “Agent” as follows: **Agent means a legal entity or person, such as an association of agricultural employers, or an attorney for an association, which (1) is authorized to act on behalf of the employer for temporary alien agricultural labor certification purposes, and (2) is not itself an employer, or a joint employer as defined in this paragraph (b).**

(1) *Admission of temporary employees* (i) *General*. Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from an employer, if petitioned for by that employer

(2) *Petitions* – (i) *Filing of petitions* – (A) *General*. A United States employer seeking to classify an alien as an H-1B, H-2A, H-2B, or H-3 temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only with the service center which has jurisdiction in the area where the alien will perform services, or receive training . . .

**(F) *Agents as petitioners*. A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as it[s] agent.**

13. Title 8, United States Code, Section 1101(b)(3) states that as used in subchapters I and II of this chapter, the term “person” means an individual or an organization.

14. Title 8, United States Code, Section 1101(a)(15)(H) and Title 8, United States Code, Section 1184 both fall under subchapter I of the relevant chapter of Title 8. As such the term “person” as that term is defined in Title 8, United States Code, Section 1101(b)(3) will control the meaning of the word “person” in the regulations which were passed pursuant to Title 8, United States Code, Section 1184.


15. Like the authorizing federal legislation in the matter of *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963), which gave the Commissioner of Patents the authority to prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing parties before the Patent Office, pre-empted a state’s authority to regulate non-lawyers in the context of filings in the Patent Office, the federal regulation, 8 C.F.R. § 214.2 (h), which specifically allows “agents” to file petitions for the admission of temporary workers and defines “agents as petitioners” (“ . . . a person or entity authorized by the

employer to act for, or in place of, the employer at it[s] agent”) pre-empts the Supreme Court of Texas Unauthorized Practice of Law Committee from taking legal action against an “agent” who merely files petitions for the admission of temporary workers as allowed by federal law.

#### VI. PRAYER FOR RELIEF

WHEREFORE, your Plaintiff respectfully requests this Court issue a declaratory judgment finding that federal law, 8 C.F.R. § 214.2(h), specifically permits non-lawyers to act as “agents” for employers for the purpose of filing petitions for temporary workers to be admitted into the country as nonimmigrant alien laborers and as such the Texas Supreme Court Unauthorized Practice of Law Committee may not take enforcement action against Amigos Labor Solutions, Inc., or similarly situated entities, which act as “agents” for employers in the aforementioned petition process.

Dated: August 16, 2005

  
ROBERT C. HINTON, Jr.  
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Solutions, Inc.

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Amigos Labor Solutions, Inc.

## DEFENDANTS

Texas Supreme Court/Unauthorized Practice of Law Committee

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Travis  
(IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert C. Hinton, Jr.  
Robert Hinton & Associates, P.C.  
5015 Tracy St., Suite 100/Dallas  
(214) 219-9300

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

RECEIVED  
AUG 16 2005  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

05 CV - 1644 B

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. § 2201-  
Seeking a declaration that federal statutes and regulations pre-empt a state's ability to determine who may file immigration applications as "agents" of employers

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

16 August, 2005

Robert C. Hinton, Jr.

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